

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>Cordell Hubbard,</b>	)	<b>CASE NO. 1:21 CV 129</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>vs.</b>	)	
	)	
<b>Keith J. Foley, Warden</b>	)	<b><u>Memorandum of Opinion and Order</u></b>
	)	
	)	
<b>Respondent.</b>	)	

**Introduction**

This matter is before the Court upon the Report and Recommendation of Magistrate Judge David A. Ruiz (Doc. 6) which recommends that the herein Petition for Writ of Habeas Corpus be transferred to the United States Court of Appeals for the Sixth Circuit. Petitioner did not file objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

**Standard of Review**

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine de novo any proposed finding or

recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” As stated in the Advisory Committee Notes to Fed.R.Civ.Pro. 72, “When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” In *Thomas v. Arn*, 474 U.S. 140, 150 (1985), the court held, “It does not appear that Congress intended to require district court review of a magistrate judge’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.”

### **Discussion**

The respondent moved to transfer this habeas petition to the United States Court of Appeals for the Sixth Circuit as a second or successive petition. Although ample time passed, the petitioner filed no response to the motion.<sup>1</sup> Consequently, the Magistrate Judge, in a thorough report which is incorporated herein by reference, recommended that the motion to transfer be granted. Having no objections, the Court has reviewed the Report and Recommendation and found no clear error. Accordingly, it accepts the recommendation. The habeas corpus petition is hereby transferred to the Sixth Circuit Court of Appeals, pursuant to 28 U.S.C. § 2244(b), as a second or successive petition seeking relief under § 2254.

### **Conclusion**

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge’s Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas Corpus is transferred to the Sixth Circuit Court of Appeals as a second or successive petition seeking relief under § 2254.

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<sup>1</sup> It is noted that petitioner is represented by counsel.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Court  
Chief Judge

Dated: 1/19/22